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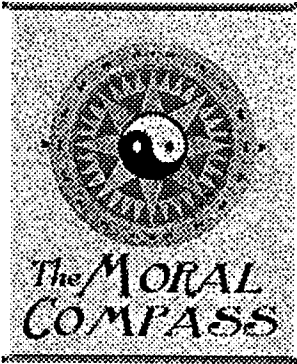
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What Is the Moral Compass?

THE MORAL COMPASS: How High the Bar?

Beliefs, per se, should not determine fitness to practice law - but ability to perform shoul

By Richard Zitrin & Carol M. Langford

Benjamin Smith's recent racially-motivated rampage focused national attention on Smith's mentor, white supremacist Matthew F. Hale -- and Hale's rejected application for admission to the Illinois bar. Many believe Smith's deadly spree was motivated by Hale's denial of admission.

Almost every bar reserves the right to test an applicant's "moral character" or "fitness" before granting admission. But far more often than not, the "character committees" that do the evaluations serve as little more than rubber stamps. Fewer than one per cent of last year's Illinois bar applicants were rejected for admission -- most for obvious deficiencies such as drug dependency or conviction of a serious crime. But in Hale's case, many have interpreted the Illinois bar's refusal to admit him as being based entirely on his political and religious beliefs.

No one should be refused admission to the bar solely because of religious, political, or personal beliefs. But the larger question remains: Do bar "character committees" have a legitimate role in evaluating a candidate's fitness to practice law? We think so. Although Hale should not be excluded from practice solely because of his beliefs, the Illinois bar's inquiry into his fitness doesn't demonstrate overzealousness in his case as much as laxity in admitting others who are unfit to meet the requirements of law practice. Underfunded, understaffed, and overworked, bars have neither the time nor inclination to take on full-scale investigations of most applicants.

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The one vote Hale got from the two Illinois panels that reviewed his case was based on the fact that since Hale hadn't done anything illegal or otherwise clearly disqualifying in the past, it would be speculative to deny him admission based on how he might act in the future. "I've never committed a crime [or] been shown to be dishonest," Hale told Open Court columnist Ann Woolner recently. (See LEX POPULI: Bigotry in Practice.)

But that thinking doesn't set the admissions bar high enough. A wide gulf yawns between denying an applicant's admission based purely on beliefs and denying admission based only on the applicant's past behavior. Bars should have the ability to make a broader determination of whether an applicant is fit to practice law. It is not only legitimate but necessary to evaluate whether an applicant is capable of fulfilling all the duties of an attorney, as embodied by the oaths lawyers take in every state. Can the individual abide by the rules of professional conduct? Maintain respect for the courts and the legal system? Perform his or her fiduciary duties to the client? If the answer to any of these questions is "no," then the applicant should not be admitted.

While the exercise of protected free speech should never be a bar to admission, here are some of the issues we believe a bar could properly consider in evaluating the admission of someone like Hale. If that individual advocates "racial holy war" against blacks, Jews, and Asians, could he perform all the fiduciary duties required of a lawyer in representing a Jew, Asian, or African-American? Those duties are far broader than being entrusted with money. They include loyalty, competence, and the duty to defer to the client's wishes about the ultimate issues in the case.

Even if he were seeking admission in a state that allows lawyers to discriminate in their choice of the race or ethnicity of their clients, could the applicant successfully interview and present testimony from a Jewish or Korean witness, and then argue the veracity of that witness' testimony? Could the applicant respect the rulings of a black judge?

When someone has expressed the views that Hale has stated on the record, these are legitimate questions that a bar "character committee" should ask -- both of the applicant and in the course of a legitimate investigation. If the bar satisfies itself that the applicant can perform the duties of an attorney, then it should approve admission. If not, admission should be denied.

We've heard the arguments to the contrary: If "moral character" is at issue, what about people who say they're Communists? Or refuse to say whether they're Communists? What about gay and lesbian applicants?

Isn't Hale at the top of a slippery slope?

These are legitimate questions, but answers exist.

First, we should abandon the term "moral character," which understandably raises the specter of McCarthyism. Morality will undoubtedly play a part in bar admissions decisions, and it should. Crimes of moral turpitude are considered more serious than other offenses in evaluating the conduct of a lawyer or of a new admittee. Few question the propriety of this distinction. But instead of the phrase "moral character," we suggest that bars emphasize standards that evaluate "fitness," or whether the applicant "has the ability fully to perform the duties of an attorney."

Second, bars must do a better job of developing objective and reasonable standards for evaluating applicants, and uniform rules to enforce these standards. Bar admission shouldn't rise or fall on a subjective view about an individual's beliefs any more than it can turn on the applicant's membership in a racist sect, the Nazi party or the Symbianese Liberation Army.

But, having set those standards, admissions panels can and should make the tough calls. Lawyers are licensed in order to protect the public -- both the society at large and the clients who use legal services. Rather than abdicating their responsibilities to evaluate the fitness of applicants, bars should do more to ensure that the goals of licensing are met -- by making the important determination as to whether an applicant will be able to perform the duties required of anyone known as "attorney at law."